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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 State of California, *et al.*,
16 *Plaintiffs*,
17 v.
18 Michael Regan, *et al.*,
19 *Defendants*.

20 Case No. 3:20-cv-3005-RS

21
22 **STATE INTERVENORS'**
23 **OPPOSITION TO DEFENDANTS'**
24 **MOTION TO CONTINUE STAY**

25 Action Filed: May 1, 2020

1 The State Intervenor-Defendants oppose the Agencies' motion to continue the stay of these
 2 proceedings, *see* ECF No. 237, for substantially the same reasons that warranted denying the stay
 3 in the first place, *see* ECF No. 223. Speculation about future rulemaking ordinarily does not
 4 justify staying a legal challenge to a currently effective rule. *See, e.g., Arizona Yage Assembly v.*
 5 *Barr*, No. 3:20-CV-03098-WHO, 2020 WL 5629833, at *8 (N.D. Cal. Sept. 21, 2020) (refusing
 6 to grant a stay even after new rulemaking began because "it is impossible to predict when the
 7 regulations will be finalized"); *California v. U.S. EPA*, 360 F. Supp. 3d 984, 993 (N.D. Cal. 2018)
 8 (denying a stay despite the EPA actively preparing a new rule because of "the ordinary
 9 uncertainty in the rulemaking process, which creates at least a 'fair possibility' of harm"). Much
 10 less is a stay justified based on a hypothetical future rulemaking process that the Agencies
 11 themselves acknowledge may never occur. ECF No. 237, at 4 (explaining that the
 12 Administrator's review could result in the NWPR being "maintained").

13 The Agencies now assert that continuing that stay will "allow time for the new
 14 Administrator to consider options and make an informed decision regarding which direction it
 15 will take with respect to the Rule." *Id.* at 3–4. But that review can occur at any time, with or
 16 without a stay. *Id.* at 4 (explaining that "Agencies have inherent authority to review past
 17 decisions and to revise, replace, or repeal a decision" (citing *FCC v. Fox Television Stations, Inc.*,
 18 556 U.S. 502, 515 (2009))). The Agencies do not explain how continuing the stay in this
 19 litigation would actually aid or allow for this ongoing review of apparently indefinite duration.
 20 On the other hand, resolving this lawsuit on the merits would provide clarity on the legal bounds
 21 of the Agencies' authority, *see* ECF No. 223, at 4, which *would* undoubtedly aid the Agencies in
 22 their consideration of any future rulemaking. Because the Agencies have not made anything
 23 approaching a "clear case of hardship or inequity in being required to go forward," *California v.*
 24 *EPA*, 360 F. Supp. 3d at 993 (quoting *Landis v. North American Co.*, 299 U.S. 248, 255 (1936)),
 25 and continuing the stay indefinitely will further prolong the legal uncertainty about the scope of
 26 the Agencies' jurisdiction, this Court should deny their motion to continue the stay.

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28

1 Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2021, I served this opposition to plaintiffs' motion for a preliminary injunction and cross-motion for summary judgment by filing it with this Court's ECF system.

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